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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 RAHSAAN COLEMAN, No. C-12-6291 EMC (pr)  
9 Plaintiff,

**10** v. **ORDER OF DISMISSAL**

11 DIANA BECTON BROWN, Municipal Court  
12 Judge In and For Contra Costa County of the  
State of California; et al..

## Defendants.

15       Rahsaan Coleman filed this *pro se* prisoner's civil rights action against two judges who  
16 presided over the criminal proceedings against him. He contends that their "practices, acts and/or  
17 policies ... have caused plaintiff to be wrongly or illegally tried, convicted and sentenced on the  
18 basis of excess of jurisdiction." Docket # 1-1, p. 3. Mr. Coleman's theory is that his conviction and  
19 sentence are invalid because the two defendant judges did not timely file their oaths of office.

20 A federal court must engage in a preliminary screening of any case in which a prisoner seeks  
21 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
22 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
23 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
24 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*  
25 pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699  
26 (9th Cir. 1990).

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
28 secured by the Constitution or laws of the United States was violated and (2) that the violation was

1 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48  
2 (1988).

3 Generally, a plaintiff may not obtain damages in a § 1983 action for alleged constitutional  
4 violations in connection with his criminal trial as long as the conviction remains in place. *Heck v.*  
5 *Humphrey*, 512 U.S. 477 (1994), held that a plaintiff cannot bring a civil rights action for damages  
6 for a wrongful conviction or imprisonment, or for other harm caused by actions whose unlawfulness  
7 would render a conviction or sentence invalid, unless that conviction or sentence already has been  
8 determined to be wrongful. *See id.* at 486-87. A conviction or sentence may be determined to be  
9 wrongful by, for example, being reversed on appeal or being set aside when a state or federal court  
10 issues a writ of habeas corpus. *See id.* The *Heck* rule also prevents a person from bringing an action  
11 that – even if it does not directly challenge the conviction or other decision – would imply that the  
12 conviction or other decision was invalid. The practical importance of this rule is that a plaintiff  
13 cannot attack his conviction *in* a civil rights action for damages; the decision must have been  
14 successfully attacked *before* the civil rights action for damages is filed. The *Heck* rule was first  
15 announced with respect to an action for damages, but the Supreme Court has since applied the rule  
16 to an action that sought declaratory relief as well as damages. *See Edwards v. Balisok*, 520 U.S.  
17 641, 648 (1997). If success in the § 1983 action would "necessarily demonstrate the invalidity of  
18 confinement or its duration," the § 1983 action is barred no matter the relief sought (i.e., damages or  
19 equitable relief) as long as the conviction has not been set aside. *See Wilkinson v. Dotson*, 544 U.S.  
20 74, 82 (2005).

21 Mr. Coleman claims that defendants violated his rights by causing his conviction in an  
22 allegedly unlawful trial – unlawful because defendants' oaths of office were defective. Although he  
23 alleges at one point that his complaint "is not challenging the criminal conviction or sentence," he  
24 alleges in the next breath that he is "challenging the established state procedure itself which  
25 destroyed his rights to a fair trial." Docket # 1-1, p. 15. He requests that the Court issue an order  
26 vacating his sentence and conviction, and order a new trial for him. *Id.* at 18. Mr. Coleman's claims  
27 are squarely within the *Heck* rule because success on them would call into question the validity of  
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1 his conviction and sentence from the Contra Costa County Superior Court. The complaint must be  
2 dismissed.

The exclusive method for a state prisoner to challenge his state court conviction or sentence in federal court is by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Mr. Coleman already has done so. His habeas petition challenging his conviction was denied in 2012, and both the district court and the Ninth Circuit denied a certificate of appealability. *See Coleman v. McGrath*, No. C 04-4069 PJH. A prisoner who wishes to file a second or successive habeas petition challenging the same conviction or sentence must first obtain from the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") an order authorizing this Court to consider a second or successive petition. 28 U.S.C. § 2244(b)(3)(A). Seeking such an order from the Ninth Circuit would be an exercise in futility for Mr. Coleman because the claim has already been rejected. Mr. Coleman presented his challenge to the judges' oaths in his first federal habeas petition and the district court dismissed the claim because it presented only a question of state law. *See Docket # 24, p. 2 in Coleman v. McGrath*, C 04-4069 PJH. The court must dismiss a claim presented in a second or successive petition that was presented in an earlier petition. *See 28 U.S.C. § 2244(b)(1)*.

## CONCLUSION

18 For the foregoing reasons, this action is **DISMISSED**. Plaintiff's request for appointment of  
19 counsel is **DENIED** because, in light of the dismissal of the action, there is no reason to appoint  
20 counsel. (Docket # 3.) The Clerk shall close the file.

IT IS SO ORDERED.

24 | Dated: April 19, 2013

  
EDWARD M. CHEN  
United States District Judge